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Issue date: 10Dec2001

CASE NO.: 2000-LHC-02489

OWCP NO.: 06-85457

In the Matter of:

ROBERT MCCLENDON (Deceased)
KAREN MCCLENDON (Widow),
Claimant

v.

INGALLS SHIPBUILDING, INC.,
Employer

APPEARANCES:

Scott O. Nelson, Esq.
For Claimant

Donald P. Moore, Esq.
For Employer/Carrier

BEFORE: JAMES W. KERR, JR.
Administrative Law Judge

DECISION AND ORDER – GRANTING SECTION 22 MODIFICATION

This proceeding involves a Section 22 Motion for Modification under the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901, *et seq.*, (the "Act"). The original claim was filed by Claimant, Karen McClendon, widow of Robert McClendon, against Ingalls Shipbuilding, Inc., Employer.

Robert McClendon died on July 13, 1991. *See* TR. 35-60. Prior to his death, Mr. McClendon and Claimant filed third- party actions against asbestos manufacturers. *See* CX-2. It is uncontested that they settled these suits without employer's prior written approval. In the original Decision and Order, this Court found that Karen McClendon was barred from receiving death benefits by Section 33(g), because

she was a “person entitled to compensation” at the time of these pre-death settlements. This opinion was reversed and remanded by the Benefits Review Board on August 7, 1996. See McClendon v. Ingalls Shipbuilding, Inc., BRB No. 94-4050 (Aug. 7, 1996). Subsequently, on March 9, 1999, this Court found that Claimant was entitled to death benefits under the Act. *See* Decision and Order on Remand at 15-16; CX-1. On June 12, 2000, Employer filed a Motion for Modification based upon the discovery of new evidence with respect to third party settlements in the case. *See* RX-5. A hearing was held in Mobile, Alabama on March 6, 2001, at which time the parties were given the opportunity to offer testimony, documentary evidence, and to make oral argument. The following exhibits were received into evidence at hearing:

- 1) Claimant's Exhibits Nos. 1-12, 14¹; and
- 2) Respondent's Exhibits Nos. 1-9.²

Upon conclusion of the hearing, the record remained open for the submission of post hearing briefs, which were timely received by both parties. This decision is being rendered after having given full consideration to the entire record.

ISSUES

The disputed issues in this proceeding are:

- 1) Whether Claimant, as a widow, entered into unauthorized, third party settlements;
- 2) If so, were these settlements executed; and
- 3) Is Employer entitled to reimbursement?

SUMMARY OF THE EVIDENCE

Testimony of Karen McClendon

Claimant, Mrs. McClendon, testified that her husband died on July 13, 1991. She stated that she only retained Maples and Lomax as counsel for her longshore claim. Claimant added that she has not received any money from third party asbestos claims after the death of her husband. She stated that she has not signed a release with any company or entered into a settlement agreement, and has not given any

¹CX-13, Karen McClendon's deposition, was timely received post hearing.

² The following abbreviations will be used in citations to the record: CX - Claimant's Exhibit, EX - Employer's Exhibit, and TR - Transcript of the Proceedings.

attorney the authority to settle for her. Claimant testified that she told her attorneys at Maples and Lomax that she wanted worker's compensation benefits instead of money from third parties. She added that she received no notice of offers to settle from third party companies or notice of dismissals after her husband's death. Claimant stated that she knew nothing about any money held in a trust fund for her until she got a letter from her attorney's office.³ TR. 35-60; CX-13.

Deposits, Records, and Litigation Forms

Both parties submitted numerous pieces of correspondence and records regarding the third party transactions alleged to be settlements in this case. *See* CX-8 - CX-12; EX-7 - EX-9. This evidence has been considered by the Court and will be cited, to the extent relevant, in the body of the opinion.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact and conclusions of law are based upon the Court's observations of the credibility of the witnesses who testified at the hearing and upon an analysis of the entire record, applicable regulations, statutes, case law, and arguments of the parties. As the trier of fact, this Court may accept or reject all or any part of the evidence, and rely on its own judgment to resolve factual disputes and conflicts in the evidence. *See Todd Shipyards v. Donovan*, 300 F.2d 741 (5th Cir. 1962). In evaluating the evidence and reaching a decision, this Court applied the principle, enunciated in *Director, OWCP v. Maher Terminals, Inc.*, 115 S. Ct. 2251 (1994), that the burden of persuasion is with the proponent of the rule. The "true doubt" rule, which resolves conflicts in favor of the claimant when the evidence is balanced, will not be applied, because it violates section 556(d) of the Administrative Procedures Act. *See Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 114 S.Ct. 2251, 129 L.Ed. 221 (1994).

I. SECTION 22 MODIFICATION

In the instant case, Employer seeks to have this Court decide the merits of its §33(g) claim under a Motion for Modification. Section 22 of the Act permits the modification of a final award if the party seeking to alter the award can establish either a change in conditions or a mistake in a determination of fact. 33 U.S.C. §922; *Metropolitan Stevedore Co. v. Rambo*, 515 U.S. 291, 30 BRBS 1 (CRT) (1995). The fact-finder has broad discretion to correct mistakes of fact, whether demonstrated by wholly new evidence, cumulative evidence, or merely further reflection of the evidence initially submitted. *O'Keeffe v. Aerojet-*

³Karen McClendon testified at the hearing on March 6, 2001. *See* TR. She testified by deposition on February 21, 2001. *See* RX-4; CX-13.

General Shipyards, Inc., 404 U.S. 254 (1971). Any evidence not previously submitted to the court can receive consideration only pursuant to a modification motion; therefore, it is an abuse of discretion not to consider the new evidence presented in a modification proceeding. Dobson v. Todd Pacific Shipyards Corp., 21 BRBS 174 (1988).

Employer asserts that Claimant's counsel accepted funds in settlement after her husband's death. Records produced at the hearing on March 6, 2001 indicate that several monetary transaction involving Claimant were not presented to Employer during the discovery process. *See* RX-1; RX-6. This Court finds that said motion is proper, because if the transactions, newly discovered evidence, are deemed credible as evidence of settlements, a mistake of fact in computing Mrs. McClendon's award of benefits exists. Therefore, Employer's Section 33(g) claim is properly before this Court pursuant to a Section 22 modification proceeding.

II. SECTION 33(G) SETTLEMENT

1. Existence of a Settlement

Section 33(g)(1) states that:

If the person entitled to compensation (or the person's representative) enters into a settlement with a third person referred to in subsection (a) of this section for an amount less than the compensation to which the person (or the person's representative) would be entitled under this chapter, the employer shall be liable for compensation as determined under subsection (f) of this section only if written approval of the settlement is executed, and by the person entitled to compensation (or the person's representative). The approval shall be made on a form provided by the Secretary and shall be filed in the office of the deputy commissioner within thirty days after the settlement is entered into. 33 U.S.C. §933(g).

Pursuant to the United States Supreme Court's decision in Ingalls Shipbuilding, Inc. v. Director, OWCP, 519 U.S. 248 (1997), at the time of an injured worker's death, the worker's spouse becomes "a person entitled to compensation," for death benefits within the meaning of section 33(g) of the Act. This Court previously found that Claimant became a "person entitled to compensation" from the date of her husband's death, which was July 13, 1991. *See* Decision and Order on Remand. Therefore, section 33(g) applies to settlements entered into by Claimant after that date.

Section 33(g) provides that the claimant must obtain prior written approval of a third-party settlement if the gross proceeds of the aggregate settlements are in an amount less than that to which the

claimant would be entitled under the Act. See Gladney v. Ingalls Shipbuilding, Inc., 30 BRBS 25 (1996). Absent that approval, the claimant forfeits such entitlement. The Section 33(g) bar is in the nature of an affirmative defense, which places the burden on the employer of proving that the claimant entered into a fully executed settlement without prior written approval. See Mallot & Peterson v. Director, OWCP (Stadtmitter), 98 F.3d 1170, 30 BRBS 87 (9th Cir. 1996).

The Court must consider whether the sums claimant received were in “settlement” of her claims against the third parties. The term settlement is not specifically defined by the Act. However, procedures that have the qualities of “judgements” are not considered settlements which would invoke Section 33(g). For example, a remittitur is not the equivalent of a mutual agreement among the parties, i.e. a settlement, but is a “judicial determination of recoverable damages.” See Banks v. Chicago Grain Trimmers’ Assn., 390 U.S. 459, reh’g denied, 391 U.S. 929 (1968). In Banks, the amount of the reduced award was determined solely by the judge and was a “judgment,” which needed no employer approval. Id. at 467. The court decided that the procedure was not a “settlement,” because Claimant was compelled to accept the remittitur so as to avoid further litigation and a potential loss of the amount that she was awarded. Id. at 467. The Benefits Review Board has also affirmed a finding that a transaction is not a settlement when there is no “acceptance, surrender, mutual consent, or consideration.” Chavez v. Todd Shipyards Corp., 24 BRBS 71, 76 (1990), aff’d in part, and rev’d on other grounds, Chavez v. Director, OWCP, 961 F.2d 1409, 25 BRBS 134 (CRT) (9th Cir. 1992).

The Benefits Review Board recently articulated several factors in determining what constitutes a settlement for purposes of invoking section 33(g). See Williams v. Ingalls Shipbuilding, Inc., BRB No. 00-908 (June 8, 2001). In the Williams case, the claimant’s counsel received benefits from the Amatex Trust and the Manville Trust on behalf of claimant. See Id. Claimant’s counsel, Maples and Lomax, deposited the Amatex money in their trust fund for claimant, but subsequently returned the amount representing claimant’s portion of the payout. See Id., Slip Op. at 4 (June 8, 2001). Maples and Lomax held the Manville Trust check, which gave the recipient 180 days to accept or reject the offered amount. See Id., Slip Op. at 4 (June 8, 2001).

The Administrative Law Judge found that the acceptance and deposit of the Amatex check into the Maples and Lomax trust account and holding of the Manville check by Maples and Lomax were sufficient actions to constitute settlements between claimant and these third parties. See Id., Slip Op. at 4 (June 8, 2001). However, the Benefits Review Board determined that the payments made were similar to judgments, as both Amatex and Manville sent payments to Claimant and other plaintiffs based on reorganization plans deemed fair and approved by the bankruptcy court. See Id. Slip Op. at 9 (June 8, 2001). The Board held that the absence of compromise, the impossibility of individual litigation, and the pre-determined nature of the disbursements supported the conclusion that these offers were more like judgments than settlements.

The factors that this Court must consider pursuant to the Williams case are the coercive nature of the transaction in dispute, the possibility of any negotiation/compromise, the possibility of individual litigation, the predetermination of the amount alleged to be a “settlement,” and whether the claimant’s rights against the third parties could be assigned to employer if section 33(b) of Act was satisfied. In the instant case Mrs. McClendon’s counsel, Maples and Lomax, received and deposited approximately fifteen amounts for Mrs. McClendon. *See* CX-5, p. 2. Employer alleges that these transactions were settlements entered into by Mrs. McClendon after her husband’s death on July 13, 1991. This Court will consider the evidence presented by Employer as to each transaction in order to determine whether or not any of them are “settlements,” invoking the application of Section 33(g).

The transfers in issue are:

1.	Rockwool	\$1,000	7/6/92
2.	Metropolitan Life Ins. Co	\$27,194.86	10/29/91, 11/26/91, & 12/23/91
3.	Owens-Illinois Marine Specialty Co., Inc.	\$7,500.00	6/14/94
4.	Standard Equipment Co., Inc. & Georgia-Pacific Corp.	\$1,642.00	1/13/93
5.	Selby Battersby & Co., Inc. Riley-Stuart Supply Co., Inc & J.E. Steigerwald	\$750.00	5/26/93
6.	Gulf Belting & Gasket Co. EX-9, p. 408	\$350.00	10/20/93
7.	M.H. Detrick	\$425.44	9/16/94
8.	Minnesota Mining & Manufacturing (3M)	\$367.43	7/11/95
9.	Gulf Coast Marine Supply	\$75.00	11/30/94
10.	U.C. Realty	\$75.00	11/30/94
11.	Amatex	\$480.00	10/6/98
12.	48 Insulations	\$500.00	7/8/98
13.	Champion	\$1,250.00	9/9/91
14.	Fibreboard (2 nd payment)	\$1,215.00	9/3/96
	Fibreboard (Interest)	\$735.99	11/14/96

Some of the transactions present in this case are identical to the ones addressed by the Benefits Review Board in the Williams case. *See Williams v. Ingalls Shipbuilding, Inc.*, BRB No. 00-908 Slip Op. at 9 (June 8, 2001). In this case, Mrs. McClendon’s counsel also received a payment made from the Amatex Trust. *See* CX-12. This payment was deposited in the Maples & Lomax trust account on behalf

of Claimant, but subsequently returned to Amatex on December 13, 1999. *See* CX-5. In light of the rationale set forth in the Williams case, involving a similar factual situation to the case at bar, this Court finds that the mere deposit of the Amatex check into the Maples & Lomax trust account for Mrs. McClendon does not constitute a “settlement” sufficient to invoke section 33(g).

Employer also presented evidence that funds were received from two entities, U.C. Realty and 48 insulations. *See* CX-5, p. 2. U.C. Realty is listed in the third party consolidated suit and 48 insulations is involved in bankruptcy proceedings. Both companies transferred funds to Maples and Lomax after Mr. McClendon’s death. *See* Id. However, the elements of a “settlement” have not been sufficiently proven to this Court. As to 48 Insulations, Claimant presented evidence that the disbursement was part of a bankruptcy distribution, a situation similar to the Amatex trust. *See* CX-11. Therefore, pursuant to the Williams decision, the elements of a negotiated settlement are not present. Additionally, there is no evidence as to whether these funds were deposited on behalf of Claimant or her deceased husband as assets of his estate. As to the U.C. Realty, the evidence shows no evidence that Claimant or Maples and Lomax have entered into any order of dismissal or released this company from its liability under the consolidated lawsuit. No additional evidence was presented to show any elements of negotiation with respect to this transaction, only that funds from this company were deposited in a trust account for claimant. This, in and of itself, is insufficient to prove that a “settlement” occurred. Therefore, the transactions involving U.C. Realty and 48 Insulations are not settlements.

However, this Court finds that the payments from Fibreboard and Champion are settlements. These funds were received and deposited on September 3, 1996, November 14, 1996, and September 9, 1991 respectively. Claimant’s response to Employer’s interrogatories indicates that she did sign a release of liability and waiver in exchange for these funds. *See* CX-5; CX-6. Using the factors present in the Williams case, this Court finds that the coercive nature and predetermined amount of a trust distribution along with the qualities of a “judgment” are simply not present with respect to these transactions. Therefore, the payments from Fibreboard and Champion are “settlements” within the purview of Section 33(g).

Claimant, through counsel, also “settled” with several third party companies in a consolidated lawsuit. Claimant was joined as a party to the lawsuit in a consolidated complaint against several third party companies in May, 1994. *See* EX-9, p. 266; CX-2. These companies include Rockwool, Metropolitan Life Ins. Co., Owens-Illinois, Marine Specialty Co., Inc., Selby Battersby & Co., Inc., Riley-Stuart Supply Co., Inc., J.E. Steigerwald, Gulf Belting & Gasket Co, Gulf Coast Marine Supply Co., and Minnesota Mining and Manufacturing (hereinafter “3M”).

This Court finds that there is evidence that Ms. McClendon entered into settlements with several of these companies. First, Employer presented court records showing orders of dismissals entered for J.E.

Steigerwald, Gulf Coast Marine Supply, Gulf Belting & Gasket Co, and 3M. The Steigerwald dismissal was executed on October 11, 1996. In the dismissal for J.E. Steigerwald the parties represented to the court that, “the parties have fully compromised and settled these causes.” A payment from J.E. Steigerwald in the amount of \$750.00 had been deposited in the firm trust account for Mrs. McClendon on May 26, 1993. *See* EX-9, pp. 402-403. An order of dismissal was entered for Gulf Coast Marine Supply on July 12, 1993. *See* EX-9, p. 422. The parties represented to the court that the plaintiffs and defendant “have reached an amicable settlement of the above referenced cause.” *See* *Id.* at 422. A payment from Gulf Coast Marine Supply in the amount of \$75.00 was subsequently deposited in the firm trust account for Mrs. McClendon on November 30, 1994. *See* EX-9, p. 422. Gulf Belting and Gasket Company was dismissed from the case on December 5, 1995. A payment from the company in the amount of \$350.00 had been deposited in the firm trust account for Mrs. McClendon on October 20, 1993. *See* EX-9, p. 408.

3M, another defendant in the third party asbestos lawsuit transferred funds to the Maples & Lomax firm on behalf of Mrs. McClendon on July 11, 1995. On July 23, 1995, 3M was dismissed with prejudice from the consolidated lawsuit. *See* EX-9, p. 530. In the list of plaintiffs attached to the Order of Dismissal, Mr. McClendon was listed as a plaintiff and noted to be deceased. *See* *Id.* While the evidence indicates that Maples and Lomax returned the funds to 3M, this was done five years after the funds had been deposited. *See* CX-4.

This Court finds that the transactions in the consolidated case, unlike the disbursements from a bankruptcy trust, are settlements for purposes of invoking section 33(g). First, records from the United States District Court in the Southern District of Mississippi show that there was an element of negotiation between Claimant, through counsel, and the third party defendants during the lawsuit. *See* EX-9. Unlike a bankruptcy disbursement, which gives a predetermined amount to all potential claimants, Claimant had the option of continuing with the lawsuit without penalty or accepting a negotiated amount from certain third parties. In return for this negotiated amount, an order of dismissal was obtained in favor of the third parties. The language in the orders, specifically the orders of dismissals involving J.E. Steigerwald and Gulf Coast Marine Supply, clearly represent that the parties negotiated and settled their dispute. These orders and disbursements all occurred after Mr. McClendon’s death and were deposited specifically for Mrs. McClendon.

Additionally, sums from these parties were received either shortly before or after the dismissal orders were entered, indicating that the amounts received were in exchange for a release from liability. All of this money was deposited in the law firm’s trust account. Only the 3M settlement funds were returned, more than five years after its order of dismissal was entered. However, the return of these funds does not negate the fact that this transaction was a settlement, because there is no evidence that Mrs. McClendon would be able to overturn the original order of dismissal against 3M, more than five years after the fact.

Therefore, this Court finds that Employer has sufficiently proven that Claimant, through her counsel, entered into several settlements with third parties after her husband's death.

2. Execution of the Settlement

In order to bar a claimant from death benefits, a settlement must also be executed. Factors relevant to execution of a settlement are: whether the claimant agreed to a settlement, signed a release, and obtained or retained money from the third-party defendant. Barnes v. General Ship Service, 30 BRBS 193, 197-198 (1996). Additional factors to be considered are whether the conditions precedent to the settlement have been satisfied; whether claimant's counsel had the authority to settle a claim on her behalf; whether any third party suits were dismissed; and whether any settlements had been rescinded, thereby returning the parties to the status quo ante. Id. at 197-198. These factors are to be considered on a case-by-case basis.

As an initial matter, this Court finds that both the Champion and Fibreboard transactions should not be considered as unauthorized executed settlements for purposes of Section 33(g). The deposits received from these third parties are part of Mr. McClendon's estate. The evidence indicates that Mr. McClendon, the deceased, signed and executed a release of liability in connection with the settlement on June 1, 1991. *See* CX-5, p. 3. Mrs. McClendon admitted that she signed these joint releases with her husband and received funds in exchange for said releases. *See* CX-3; CX-5. While these transactions are undoubtedly "settlements", Mrs. McClendon did not become a "person entitled to compensation" until her husband's death on July 31, 1991. Therefore, while these settlements were executed, Section 33(g) does not apply, because they were executed prior to Mr. McClendon's death.

Other significant factors with respect to settlement execution are whether the claimant signed liability releases or whether her attorney's had authority to sign the releases and settle the cases for her. Claimant denies that she personally entered or executed any settlements with third parties after her husband's death. *See* TR. 35-60. However, she did concede that attorneys in the Maples and Lomax law firm were retained to represent her, and it is clear to this Court that her attorney did consummate settlements on Claimant's behalf. Therefore, after an analysis of the appropriate agency law and the evidence presented in this case, this Court finds that Claimant's attorneys, the law firm of Maples & Lomax, had the apparent authority to act on her behalf.

Since these third party settlements were made pursuant to a Mississippi state law suit, Mississippi state law controls whether a contract of settlement was made and whether it should be enforced. Terrain Enterprises v. Western Casualty and Surety Co., 774 F.2d 1320, 1322 (5th Cir. 1985). Mississippi follows the common law rule and presumes that an attorney who has represented a party is authorized to

take all action necessary to conduct the litigation and that there is apparent authority to settle a case. See Terrain 884 F.2d at 1322. Under the common law rules, an attorney has the authority to settle a claim for their client and if they do so to their client's detriment, they are responsible to said client. The 5th Circuit has also noted that the burden of showing that the attorney has no authority to act is on the party denying such authority. See Terrain, 774 F.2d 1322 citing Hirsh Brothers and Co. v. R.E. Kennington Co. 155 Miss. 242, 124 So. 344 (1929).

In the present case, Mrs. McClendon retained Maples and Lomax to handle both her and her husband's claims regarding his asbestos injuries. *See* CX-2; RX-4. She testified that she retained Maples and Lomax to act on her behalf regarding only her Longshore claim. *See* TR. 35-60; CX-13. However, Mrs. McClendon has presented no evidence or contract limiting Maples and Lomax to pursuing a Longshore claim. Additionally, her actions do not support her claim of limited authority, because she admitted that on May 23, 1994, years after her husband's death, she was joined as a party in a consolidated lawsuit against the third party companies. *See* CX-3. At no time did she retain separate counsel for the third party claim or state that Maples and Lomax could not proceed with the third party claim. Therefore, pursuant to Mississippi agency principles, this Court finds that Maples and Lomax had the apparent authority to act on Claimant's behalf in settling her claims against third parties. The actions of said law firm in signing the orders of dismissal as to certain third party asbestos companies were sufficient to execute the settlements with J.E. Steigerwald, Gulf Coast Marine Supply, Gulf Belting & Gasket Co, and 3M. All of these companies transferred a monetary amount to Maples and Lomax on behalf of Mrs. McClendon a short period before and after the dismissals were entered. Therefore, all conditions precedent to a settlement were satisfied, and the settlements were consummated.

With regard to the 3M settlement, this Court also finds that it was successfully executed even though Maples and Lomax returned the funds. First, Maples and Lomax returned the funds almost 5 years after the agreement was consummated. *See* CX-9; CX-10. Second, there is no evidence that the return of the money transferred would effect a rescission of the Order of Dismissal and return the parties to the status quo. Therefore, after considering the factors articulated by the Benefits Review Board in the Williams case, this Court finds that the settlements with J.E. Steigerwald, Gulf Coast Marine Supply, Gulf Belting & Gasket Co, and 3M were executed. Claimant's death benefits under the Act ceased upon the consummation date of the first unauthorized settlement. Gulf Coast Marine Supply Company was one of the first parties to be dismissed from the consolidated lawsuit. The execution of this settlement was completed on November 30, 1994, when the settlement funds were deposited into the firm's trust account for Mrs. McClendon. Although Gulf Coast Marine Supply Co. was dismissed before the date Claimant was actually joined as a plaintiff, the funds received by Maples and Lomax were marked for her, and not Mr. McClendon's estate. Neither Claimant nor her attorneys sought Employer's approval for this settlement. Given this evidence, the Court finds that Claimant did enter and consummated an unauthorized

settlement with this company after her husband's death. Therefore, Claimant's entitlement to worker's compensation death benefits ceased on November 30, 1994.

III. REIMBURSEMENT

Under Section 33(f) of the Act, an employer is entitled to credit a claimant's net recovery from a third party settlement against the compensation owed to claimant under the Act. See 33 U.S.C. §933(f). Previous payments by an employer should be refunded from a claimant's recovery, resulting in a right to be reimbursed from third party settlements. See Bartholomew v. CNG Producing Co., 862 F.2d 555 (5th Cir. 1989). Since this Court has found that Claimant, through counsel, executed unauthorized third party settlements, Employer is entitled to reimbursement from the settlement amounts. Employer has successfully proven that Mrs. McClendon executed settlements with J.E. Steigerwald, Gulf Coast Marine Supply, Gulf Belting & Gasket Co, and 3M. The funds for 3M, however, were returned by Maples and Lomax and are no longer held in the trust fund for Claimant. See CX-9; CX-10. Therefore, Employer is entitled to reimbursement for past compensation paid from any other amounts held in trust, as of the date of this opinion, for Mrs. McClendon by the Maples and Lomax law firm.

IV. CONCLUSION

In light of the evidence presented, this Court finds that Claimant, through her counsel, consummated unapproved third party settlements with several companies after she became a "person entitled to compensation" under the Act. These settlement amounts were less than the compensation to which she may have been entitled, and she failed to obtain approval of the settlements. As a result, under section 33(g), Claimant's claim for benefits after November 30, 1994 is barred. Employer is also entitled to reimbursement from the above mentioned third party funds received on behalf of Mrs. McClendon. Therefore, Employer's Section 22 Modification Motion is hereby GRANTED.

Accordingly this Court's Original Decision and Order, entered on March 9, 1999, is modified as follows:

ORDER

It is hereby **ORDERED, ADJUDGED AND DECREED** that:

- (1) Claimant, through her counsel, consummated unapproved third party settlements with several companies after she became a "person entitled to compensation" under the Act;
- (2) These settlement amounts were less than the compensation to which she may have been entitled, and she failed to obtain approval of the settlement;

- (3) Therefore, pursuant to Section 33(g) of the Act, Mrs. McClendon's entitlement to death benefits under the Act ceased on November 30, 1994, the date that the first unauthorized settlement was consummated;
- (4) Employer is entitled to reimbursement from the unauthorized third party settlement funds for any death benefits paid to Claimant after that date;

Entered this 10th day of December, 2001, at Metairie, Louisiana.

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JAMES W. KERR, JR.

Administrative Law Judge

JWK/sls